



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,013	12/18/2001	Kolazi S. Narayanan	FDN-2692	2430

7590 12/09/2003  
INTERNATIONAL SPECIALTY PRODUCTS  
Attn: William J. Davis, Esq.  
Building No. 10, Legal Department  
1361 Alps Road  
Wayne, NJ 07470

EXAMINER
METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
1712	

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/023,013

Applicant(s)

NARAYANAN ET AL

Examiner

Daniel S. Metzmaier

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12 is/are rejected.
- 7) ☒ Claim(s) 11 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-13 are pending.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jon et al, US 5,968,990, in view of Newton et al, US 5,547,918 A.

Jon et al (column 2, lines 5-57) disclose compositions and concentrations to make a water-dilutable microemulsion concentrate of an agriculturally active ingredient including Amitraz. Said concentrates and microemulsions read on the claims. Jon et al (column 2, lines 39-45) discloses the buffering of Amitraz to pH 7 and the stability

thereof. The addition of a buffering agent as claimed is inherent to the use of the Jon et al compositions as a pour-on dip or spray formulation.

Jon et al differs in the disclosure of a specific buffering agent and an aromatic oil.

Newton et al (abstract, column 2, lines 35-42 and 43-62 ; column 6, lines 44 and 60, to column 7, line 16 ; column 4, line 57, to column 6, line 16 et seq ; particularly column 5, line 62, to column 6, line 6 ; and examples) teaches aqueous agrochemical suspensions employing a structured surfactant (column 2, lines 35-42), possibly amitraz as a suitable active agent (column 6, line 44), aromatic oils (column 6, lines 60 et seq) as defined by applicants and electrolyte including carbonates and bicarbonates optionally with alkali or ammonium hydroxide to improve stability by adjusting the pH (column 5, line 62, to column 6, line 6).

Applicants independent claim 1 defines aromatic oils, which are set forth in the instant specification as including vegetable oils.

These references are combinable because they teach compositions employing amitraz and methods of making compositions more stable. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ commonly known buffers in stabilizing the active Amitraz compositions taught in the Jon et al '990 reference to form a more stable composition as taught in Newton et al reference.

Furthermore, Newton et al (column 2, lines 43-61) teaches the incorporation of the oils improve the stability of the suspended compositions. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ aromatic

oils as a conventional additive to the active Amitraz compositions taught in the Jon et al '990 reference to form a more stable composition as taught in Newton et al reference.

***Response to Arguments***

4. Applicant's arguments filed September 8, 2003 have been fully considered but they are not persuasive.
5. Applicants (pages 5 and 6) assert the Jon et al reference lacks component (i)(e) and component (iii) and the Newton et al are directed to suspensions rather than emulsions. This has not been deemed persuasive because Newton et al (abstract) discloses biocidal or agrochemical compositions comprising particles or droplets. Said droplets are characterized in Newton et al (column 6, lines 26-35) as having a droplets size (particle size and droplet size are interpreted here as synonymous and is often referred to as such) as low as 0.1 microns. Microemulsions are generally known to have particle sizes (droplet sizes) of less than 0.2 microns. Attention is directed to Rosen, **Surfactants and Interfacial Phenomena**, page 224.

Applicants further assert the Newton et al reference is directed to aliphatic oils rather than applicants aromatic oils. This has not been deemed persuasive since applicants have defined aromatic oils to include vegetable oils, which Newton et al discloses.

***Allowable Subject Matter***

6. Claims 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not disclose or fairly suggest the aromatic oils now claimed in claim 11. The microemulsion pH range of claim 13 is not disclosed or fairly suggested in the prior art of record. It is noted that applicants set forth a pH of between 6-8 for the Metsulfurons in the Summary of the Invention, which is outside of claim 13.

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Application/Control Number: 10/023,013  
Art Unit: 1712

Page 6

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, inquiry should be directed to the receptionist whose telephone number is (703) 308-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
**Daniel S. Metzmaier**  
**Primary Examiner**  
**Art Unit 1712**

DSM